

LABOUR DEPARTMENT

The 4th March, 1986

No. 9/7/86-6Lab/1247.—In pursuance of the provisions of Section 17 of the Industrial Dispute Act 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of the Administrator, Municipal Committee, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 235 of 84.

between

SHRI ISHWAR DUTT, WORKMAN AND THE MANAGEMENT OF THE ADMINISTRATOR, MUNICIPAL COMMITTEE, ROHTAK.

Shri H. R. Vats, A. R.—*for the workman.*

Shri Ram Singh Joshi, A. R.—*for the management.*

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Ishwar Dutt and the management of the Administrator, Municipal Committee, Rohtak, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. 39204—9 dated 16th October, 1984:—

Whether the termination of services of Shri Ishwar Dutt is justified and in order? if not, to what relief is he entitled?

2. After receipt of the order or reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a peon since 29th March, 1973 against leave vacancy and from 11th January, 1976 to 13th October, 1982 on regular basis, but the respondent choose to terminate his services unlawfully just to accommodate its favourites, though the work and conduct of the workman all through has been satisfactory.

3. In the reply filed by the respondent, the claim of the petitioner has been controverted in as much as, it is alleged that the petitioner was employed on daily wages and not as a regular employee as alleged. It is further alleged that the petitioner never claimed reinstatement prior to 12th January, 1984, the date on

which the demand notice was raised and so, the present claim is barred under section 33-C (i) of the Industrial Disputes Act, 1947. It is further alleged that since the services of all the employees of the Municipal Committee are governed by the Punjab Civil Services Rules, so, jurisdiction of this Court stands ousted. It is also alleged that the Labour Department of the Government of Haryana has also held that the respondent committee is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947, (hereinafter referred to as the Act, and so, it is alleged that the reference is bad in law.

4. On the pleadings of the parties, the following issue was settled for decision on 21st March, 1985:—

Whether the termination of services of Shri Ishwar Dutt is justified and in order? If not, to what relief is he entitled?

5. In support of his claim, the petitioner appeared as his own witness as WW-1 and the management examined Shri Ram Singh Joshi, Office Superintendent of the respondent committee as MW-1.

6. Heard.

7. The petitioner made a statement completely in corroboration of the averments made in the Claim Statement, so, I need not suffer repetition. He denied the suggestion that he remained employed on daily wages till his date of termination. Shri Ram Singh Joshi, MW-1 stated that the petitioner was employed as a peon in the year 1975 against a leave vacancy, in which capacity he served up to the year 1981 and thereafter the Deputy Commissioner made regular appointment of Shri Gulshan Kumar,—*vide* Exhibit M-2, and so, the services of the petitioner were dispensed with.

8. There is no denying the fact that the respondent committee did not comply with the mandatory provisions of section 25F of the said Act while terminating the services of the petitioner, because no notice pay or retrenchment compensation was paid to him, though the petitioner has actually worked for more than 240 days with the respondent during the last 12 calendar months from the date of his termination. This is evident even from the date furnished by the respondent in the Court on 26th November, 1985 that the petitioner has worked for 262 days with the respondent from

October 1981 to October 1982. As per the information furnished by the respondent,—vide Exhibit MW-1, dated 12th June, 1985 the petitioner has worked for 20 days in the month of October 1981 and 21 days in the month of November 1981. While calculating 240 days the Court has to take into consideration of last twelve calendar months from the date of termination. So, there is no escape from the conclusion that the petitioner has worked for more than 240 days with the respondent during the last twelve calendar months from the date of his termination and as such, statutory provisions of section 25F are fully attracted in this case, compliance of which was never made by the respondent and so, the order of termination passed was illegal and arbitrary and cannot be sustained.

9. Though, there is no separate issue on the plea taken by the respondent that the respondent committee is not an "industry", even there is no difficulty in disposing of the same. The main prop of the respondent in support of this plea Exhibit M-3, a copy of the letter issued by the Labour Department, Government of Haryana that the Board of School Education Haryana is not an "industry", because its employees are governed by the provisions of Punjab Civil Services Rules. Taking a cue from the letter, on behalf of the respondent it was contended that since the provisions of Punjab Civil Services Rules are applicable to the employees of the respondent committee, so, Industrial Disputes Act, 1947 will not apply. This contention is absolutely unfounded. In the Bangalore Water Supply and Sewerage Board case reported in 1978 Lab. I.C. 467 a seven Bench Judges of the Hon'ble Supreme Court of India dealt in detail about the scope, sweep and ambit of the term "industry" as defined in section 2(j) of the said Act. Their Lordships were endorsing the law laid down in Nagpur Municipality reported in AIR 1960 S.C. 675 observed in para 67 of the judgement as under:—

"Sri Justice Subba Rao, with uninhibited logic, chases this thought and reaches certain tests in Nagpur Municipality (AIR 1960 SC 675), speaking for a unanimous bench. We respectfully agree with much of his reasoning and proceed to deal with the decision. If the ruling were right, as we think it is, the riddle of "industry" is resolved in some measure. Although foreign decisions, word and phrases, lexical plenty and definitions from

other legislations, were read before us to stress the necessity of direct co-operation between employer and employees in the essential product of the undertaking, of the need for the commercial motive, of services to the community etc., as implied inarticulately in the concept of "industry", we by-pass them as but marginally persuasive. The rulings of this Court, the language and scheme of the Act and the well-known canons of construction exert real pressure on our judgement. And, in this latter process, next to Banerji (AIR 1953 SC 58) comes corporation of Nagpur (AIR 1960 SC 675) which spreads the canvas wide and illumines the expression analogous to 'trade or business', although it comes a few days after Hospital Mazdoor Sabha (AIR 1960 SC 610) decided by the same bench". M

10. These observations of the Supreme Court clinches the controversy in favour of the petitioner and there is no difficulty in holding that the respondent Municipality especially its administrative wing falls within the ambit of the term "industry" as defined in section 2(j) of the said Act and as such the provisions of the Industrial Disputes Act, 1947, will apply in this case.

11. In the light of my fore-going discussion, there is no difficulty in holding that the order of termination passed against the workman was illegal, unlawful and arbitrary, which was passed in flagrant dis-regard of the mandatory provisions of section 25F of the said Act and as such, the same is set aside and since the demand notice was raised by the petitioner after a lapse of just more than one year of his termination, he cannot be deprived from the benefits of back wages, because the Courts have usually frowned upon references delayed for more than three years after termination. So, the workman is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated 1st January, 1986.

B. P. JINDAL
Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 235-84/179 dated 3rd Feb., 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL
Presiding Officer,
Labour Court, Rohtak.

No. 9/7/86-6Lab/1250.—In pursuance of the Provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Supereme Motors Ltd., Delhi Road Hissar:—

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 114 of 83.

between

SHRI NARAIN DASS, WORKMAN AND THE MANAGEMENT OF M/s SUPEREME MOTORS LTD., DELHI ROAD. HISSAR

Shri T. C. Gupta, A. R. for the workman.

Shri Charan Singh Mehta, A. R. for the Management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Narain Dass and the management of M/s. Supreme Motors Ltd., Delhi Road, Hissar, to this Court, for adjudication,— vide Haryana Government Gazette Notification No. 40265—69, dated 5th August, 1983:—

Whether the termination of service of Shri Narain Dass was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Mechanic since 1977 but the respondent choose to terminate his services unlawfully with effect from 30th June, 1982 in flagrant disregard of the provision of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, it is alleged that services of the petitioner were never

terminated as alleged, because the respondent served a notice dated 31st May, 1982 informing him that his services are no longer required, because dealership of the respondent had been cancelled by M/s. Tata Engineering and Locomotive Company Ltd. in the year 1981 and the respondent was left with no work to keep its employees busy and as such notice dated 31st May, 1982 was served upon the petitioner informing him that his services shall not be required with effect from 30th June, 1982, but on the request made by the Petitioner alleging illness of his wife, he was granted extension in employment upto 31st August, 1982 on compassionate grounds, on which date, the petitioner received his full and final payment under settlement of his claim. On this ground it is alleged that the petitioner has no tenable claim against the respondent.

4. On the pleadings of the parties, the following issue was framed on 27th July, 1984:—

1. Whether the termination of services of Shri Narain Dass was justified and in order? If not, to what relief is he entitled?

5. The petitioner himself appeared as WW-1 and made a statement in corroboration of his claim except that he alleged the date of termination as 31st August, 1982, though in the Claim Statement, date given is 30th June, 1982. The respondent examined MW-1 Shri Muni Lal, its Branch Manager at Hisar.

6. Heard.

7. The petitioner being an employee of the respondent is not denied. So, the order of employment. On behalf of the respondent it was argued that since the dealership of the respondent had been cancelled by the M/s Tata Engineering and Locomotive Co. Ltd. in the year 1981, the respondent was left with no work to keep its employees busy and so, the respondent was constrained to serve a notice of termination upon the petitioner on 31st May, 1982, which was to be effective with effect from 30th June, 1982, but, on a written request made by the petitioner, he was granted extension in service upto 31st August, 1982. The learned Authorised Representative of the respondent contended that on 1st September, 1982 the petitioner finally settled his accounts with the respondent after accepting a sum of Rs. 835.75 and as such, now the petitioner has no claim to be reinstated. On the other hand, Shri Gupta learned Authorised Representative of the petitioner contended that the receipt voucher Exhibit M-1

is not a full and final settlement with the respondent, because,—vide this voucher the petitioner received, his salary for the month of August, 1982. Even if, for the sake of arguments it be believed that the said voucher was executed by the petitioner in full and final settlement of his claim, even then the same does not exonerate the respondent from payment of retrenchment compensation to the petitioner under section 25F of the said Act. In that behalf he has drawn my attention to 1980 LLN 494 between Sudhir Vishnu Panvalkar and Bank of India. In the case under reference the management paid three months pay and allowances to the aggrieved employee against receipt in full and final settlement and the said pay slip was got encashed by the employee, who after payment lodged a strong protest with the management. In that situation, his Lordship of the Bombay High Court held that merely because the petitioner gave receipt in the from demanded by the Bank (Management) viz. in full and final settlement cannot spell out acquiescence on the part of the petitioner. In the present case also the receipt voucher dated 1st September, 1982 cannot be taken into be as full and final settlement of the claim of the petitioner, though the petitioner had earlier requested for extension in employment on compassionate grounds. It may be possible, and I have no reason to disbelieve the averments made on behalf of the respondent, that after cancellation of the dealership, repair work with the respondent dwindled sharply necessitating retrenchment of the employees but at the same time, the same could not have done by the respondent without complying with the mandatory provision of the Industrial Disputes Act, 1947, which in this case, was never done by the respondent. So, the order of termination cannot be sustained and as such, the same is set aside.

8. Now, the question would be as to whether the workman deserves to be reinstated or not. In my opinion, he cannot be reinstated, because the work load with the respondent after cancellation of the dealership by M/s. Tata Engineering and Locomotive Company Ltd. has become virtually nil and the learned Authorised Representative of the respondent during the course of arguments has brought to the notice of this Court that most of the business centres of the respondent have since been closed except skeleton staff, which is being kept to guard the premises. So, in lieu of reinstatement, the workman is awarded a sum of Rs. 4,000 as compensation for rehabilitation. The

reference is answered and returned accordingly with no order as to cost.

Dated the 7th January, 1986.

B. P. JINDAL

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

Endorsement No. 114-83/172 dated, the 3rd Feb., 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

No. 9/786-Lab/1251.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Mohan Spinning Mills, Rohtak:—

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 234 of 80

between

SHRI ROSHAN LAL, WORKMAN AND THE MANAGEMENT OF M/S. MOHAN SPINNING MILLS, ROHTAK,

Shri Raghbir Singh, A. R. for the workman.
Shri M. M. Kaushal, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Roshan Lal and the management of M/s. Mohan Spinning Mills, Rohtak, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 38163—68, dated 16th October, 1984:— ,

Whether the termination of services of Shri Roshan Lal is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The petitioner has challenged his order of termination, dated 13th July, 1984 on the ground that the same was passed by the respondent without holding any domestic probe against him and that he was in the permanent employment of the respondent since 1st January, 1965 and that he was victimised because of his union activities as he was the General Secretary of the Cotton Textile Workers Union, which had a sizeable following amongst the workers of the respondent mill. So, he has prayed that his termination be set aside and be reinstated with continuity of service and full back wages.

3. In the reply filed by the respondent, preliminary objections taken are that the reference is bad in law, because the reference is regarding the justifiability or otherwise of the alleged termination of the petitioner, though, in fact, the petitioner was dismissed from employment. On merits, it is alleged that the petitioner was employed on 11th June, 1965 as a Spead Frame Tentor and was designated as Humidity Attendant since 25th January, 1978. It is further averred that before passing the order of termination, the petitioner was fully heard and the order of dismissal was passed in-consonance with the provisions of the Certified Standing Orders as applicable upon the respondent mill. *Inter alia* it is alleged that a binding settlement was arrived at between the work force and the management of the respondent mill in the month of April, 1984, which was to remain in force for a period of two years, where under the workers agreed not to resort go slow, tool down or any such tactics, but the workers started indulging in pernicious practices from the very next month May, 1984 but even then the management as a gesture of good will again arrived at an amicable settlement with the workers in the month of May, 1984, but in spite of that, the workers did not see the path of reason and they started indulging in unhealthy tactics resulting in slump in production and so, a meeting was commissioned by the Labour Commissioner, Haryana and also by the Deputy Labour Commissioner, Sonepat, without any tangible outcome. It is further alleged that in creating these chaotic conditions the petitioner played a prominent part. Additional pleas projected are that the applicant remained gainfully employed after his dismissal, so, in case of reinstatement, he shall not be entitled to back wages.

4. In the replication filed by the petitioner, all these allegations have been controverted by the management. On the pleadings of the parties,

the following issues were settled for decision by me on 15th January, 1985:—

1. Whether the reference is bad in law ? OPR.
2. Whether the workman is gainfully employed after alleged termination of his employment ? OPR.
3. Whether the termination of services of Shri Roshan Lal is justified and in order ? If not, to what relief is he entitled ?
5. In support of his case, the petitioner appeared as WW-1 and the respondent examined MW-1 Shri M. K. Gandhi, its Chief Executive, MW-2, Shri Subhash Chander Jain, a clerk of the Labour Officer, Rohtak and Shri Tek Chand, Assistant Spinning Master of the respondent as MW-3.
6. Learned Authorised Representative of the parties heard. My findings on the issues framed are as below:—

Issue No. 1

7. The learned Authorised Representative of the respondent gracefully conceded that he does not press this issue at the bar, because from the order of termination it is not clear as to whether services of the petitioner were terminated or he was dismissed from employment.

8. To prove the allegations that his termination was unjustified, the petitioner Shri Roshan Lal appeared as WW-1 and stated that he was employed as Humidity Attendant in the respondent mill on permanent basis on monthly salary of Rs. 596 and that on 31st July, 1984 his services were terminated,—vide order Exhibit W-1, and that he was not given any charge-sheet about any alleged mis-conduct, nor any enquiry was held. He further stated that on 12th July, 1984 his duty was not as a Humidity Attendant but he was working in the general shift and that on that date, one Shri Rajinder Parshad was Humidity Attendant, who made entries in the log book and attendance register. He further stated that he has been victimised because of his union activities as he was General Secretary of the Cotton Workers Union operating in the respondent mill.

9. To prove its side of the case, the management examined WM-1 Shri MK. Gandhi, who

remained posted as Chief Executive of the respondent mill from 5th May, 1984 to 10th September, 1984. He stated that settlement Exhibit MW-1/A was effected in his presence and that during its tenure, there was industrial unrest in the mill; because the workers indulged in acts of gross indiscipline and insubordination and the union resorted to "go slow" and "tool down" tactics resulting in slump in production and that the workers used to sit outside the working shed and that the respondent used to issue notices to the workers and the union leaders to see the path of sanity but without any result and that various settlements arrived at with the workman were not adhered to creating conditions of complete chaos in the respondent mill, where the workers used to intimidate the senior functionaries of the mill, in case, they insisted upon them to increase the production and that the order of dismissal against the petitioner was passed by him on 13th July, 1984, because a day earlier around 2-15 p.m. he was informed by Shri Sharma, Senior Spinning Master that the door of the Humidity Tower of Ring Frame Section was kept open by the petitioner resulting in disturbed conditions in the Ring Frame Shed and the resultant overlapping of the machines and the consequent loss in production and increase in wastage. He further stated that Shri Sharma told him that Shri Tek Chand Dy. Spinning Master and Shri Panwar, Shift In-charge had gone to check the Humidity Tower on the said date and found the workman sleeping inside with doors open and when questioned by the two officers, the workman hurled abuses at Shri Tek Chand and also threatened him with dire consequences, in case, they reported the matter to the higher authorities. He further stated that there was loss in production to the tune of 500 to 600 Kilograms of yarn on 12th July, 1984 and 13th July, 1984 and that production of yarn is a continuous process if one section stops functioning it paralyses the entire production process. He further stated that he himself went to the ring Frame Department for on the spot enquiry, where he called the workman and the two officers Shri Tek Chand and Shri Panwar but the workman failed to give any satisfactory reply and thereafter he passed the order of dismissal without holding any domestic probe, for which, atmosphere in the mill was not congenial. MW-2 Shri Subhash Chand, who produced various settlements arrived at between the workman and the management. MW-3 Shri Tek Chand, Assistant Spinning Master, who fully corroborated the version of Shri Gandhi and as such, I need not suffer repetition.

10. Beside the oral evidence discussed above, the management has placed on the file a plethora of documents, perusal of which goes to show that there was a mushroom growth of unions in the respondent mill, which were pulling apart the working force in different direction and the management was saddled with the onerous task of weighing five kilograms of frogs in the conventional weighing scale. The management arrived at various settlements with the working force which were never adhered to. Production in the respondent mill suffered huge loss between the years 1981 to 1984. Conciliation proceedings held by the Labour Department also proved of no avail. Even the Civil Court intervened with a stay order to bring semblance of order in the turmoil which prevailed in the respondent mill. The workers were resorting to 'go slow' and 'tool down' tactics resulting in dwindling production. I have given a brief spectrum of the conditions prevailing in the respondent mill at the time when the order of dismissal was passed against the petitioner, who by his own showing was General Secretary of the union functioning under the name and style of Textile Workers Union Rohtak. The learned Authorised Representative for the respondent contended that in such a situation it was not possible or expedient for the respondent to hold a domestic enquiry against the petitioner, which would have further aggravated the already chaotic conditions prevailing in the respondent mill and as such, the respondent was justified in dispensing with the domestic probe, because the Certified Standing Orders applicable upon the respondent mill also do not contain any provision for holding such a probe.

11. There are no grounds for dispute to the contention of Shri Kaushal learned Authorised Representative of the respondent that the working of the respondent mill was to some extent affected because of 'go slow' and other tactics resorted to by the work-force but he has not been able to satisfy this Court as to what role was played by the petitioner in all these nefarious activities. There can be no quarrel with the legal position that with the incorporation of section 11-A in the Industrial Disputes Act, 1947, the employer has got a right to adduce evidence before the Tribunal or the Labour Court to justify his action against the workman, in which, no domestic probe was held. After incorporation of this section, the Tribunal or the Court is now clothed with the powers to reappraise the evidence adduced during the enquiry proceedings and arrived at its conclusion in case, the finding of the Enquiry Officer are manifestly perverse

but in the present case, no domestic probe was held. Only spot enquiry was made on the complaint made by Shri Tek Chand, Assistant Spinning Master to Shri Gandhi, Chief Executive, who was examined as MW-1, even no findings were recorded by him regarding his spot enquiry and simply an order of termination was passed against the workman on the next day. The learned Authorised Representative of the workman contended that the holding of domestic probe was a must before passing the order of dismissal and in support of his contention Shri Singh cited 1985 Lab. I.C. 534 *workman of Hindustan Steel Limited and another V/s. Hindustan Steel Ltd and others*. In the case under reference enquiry was dispensed with by the management for certain reasons under the Standing Order applicable upon the management. The Hon'ble Supreme Court found those reasons not to be tenable and as such, set aside the order of termination. As already observed in the Standing Order applicable upon the respondent mill, there is no provision even for domestic enquiry, short of power of the management to dispense with the same under certain recorded circumstances. A beaddrill of authorities were cited on behalf of the respondent to buttress the plea that in cases of insubordination or indiscipline, the Court or the Tribunal should be reluctant to interfere with the order of termination or dismissal, as the case may be, under section 11-A of the said Act, because condonation of such acts breeds indiscipline resulting in industrial unrest and consequent loss in production. Authorities cited were 1980 (1) LLN 70 *Sarabhai M. Chemicals (S.M. Chemicals and Electronics), Ltd and M. S. Ajmere and another, 1979.* (54) *Indian Factories Journal Bishwa Nath Dass and others V/s. Ramesh Chandra Patnaik and another, 1963 (I) LLJ, 291 between Bengal Bhattee Coal Company and Ram Prabesh and others, 1980 (56) Indian Factories Journal Page 261 between State Bank of India V/s. J. D. Jain and another, 1981 (I) LLN between Beli Ram and Associated Instrument Manufacturers (India) (P) Ltd, New Delhi and others.* I have gone through all these authorities. These were handed out on facts entirely different from the facts of the case in hand. In the present case, charge of alleged mis-conduct against the petitioner is that on 12th July, 1984 he was found sleeping in the Humidity Tower, with doors, kept open resulting in disturbance in the humidity ratio in ring frame section, which led to overlapping of the machines and resultant loss in production and wastage of raw material.

On behalf of the petitioner Shri Singh contended that on 12th July, 1984 the petitioner was not on duty at the Humidity Tower and that his duties were in the general shift as is born out from the entries in the log book kept at the tower and produced in the Court and so, there was no question of the petitioner being found sleeping with doors open. There is no dispute that the petitioner was functioning as reliever of the humidity attendants. I see no reason for Shri Tek Chand, Assistant Spinning Master who was accompanied by Shri Panwar, Shift Incharge to make a wrong report to the management in case, the workman would not have been there at the humidity tower. Any office bearer of the union of workers does not get a licence to hold to ransom the functioning of the concern, in which, he is employed. So, I am not inclined to believe that the petitioner was framed on trumped up charges. At the same time, I find that even if there had been a provision in the Certified Standing Orders for holding a domestic probe into the alleged mis-conduct against the petitioner, even then the management was justified in dispensing with the same, because of the prevailing atmosphere of chaos in the respondent mill when senior functionaries of the respondent mill were being intimidated by the workers, which invited intervention from the Civil Court also. But at the same time it can be found that the punishment meted out to the petitioner was glaringly dis-proportionate in relation to his mis-conduct, because penalty of such a drastic nature has which affects the livelihood of the employee should not have been awarded. So, order of termination is set aside being arbitrary and capricious and as such, this issue goes in favour of the workman.

Issue No. 3

12. On this issue there is a simple denial to a suggestion put to the workman in cross examination that the workman remained employed at Jind after his termination. Otherwise, the respondent has failed to produce any evidence to prove that the workman has remained gainfully employed after his termination. So, the issue goes against the respondent.

13. Now, the question of back wages survives. I have already held that the petitioner was guilty of serious dereliction of duties, because he was found sleeping in the humidity tower with doors kept open resulting in disturbance in the ring frame section and because of variation in the humidity, the machines installed in the ring frame section overlapped,

resulting in loss of production and wastage. It is also borne out from the evidence on record that the financial position of the respondent mill was not very flattering because of serious labour unrest from the year 1982 to 1984. Awarding full wages will amount to condoning the serious lapse committed by the petitioner. Under these circumstances, the petitioner is ordered to be reinstated with continuity of service and 40 per cent of back wages. The reference is answered and returned accordingly with no order as to cost.

Dated 2nd January, 1986. B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 234-80/173 dated 3rd Feb., 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL

Presiding Officer,
Labour Court, Rohtak.

The 15th April, 1986

No. 9/8/86-6Lab/2911.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Industrial Ancillaries Private Ltd., Faridabad, C/o Ply cast, Sector 6, Faridabad:—

IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 374 of 1984

between

SHRI ROOP CHAND, WORKMAN AND THE RESPONDENT-MANAGEMENT OF
M/S. INDUSTRIAL ANCILLARIES PRIVATE LTD., FARIDABAD, C/O PLYCAST
SECTOR 6, FARIDABAD

Present:-

Shri Roshan Lal Sharma for the workman.

Shri R. C. Sharma for the respondent-managemnet.

AWARD

This industrial dispute between the workman Shri Roop Chand and the respondent-management of M/s. Industrial Ancillaries Pvt. Ltd., Mathura Road, Faridabad, C/o ply Cast Sector 6, Faridabad has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/19-82/34788—94, dated 11th September, 1984 under section 10(i)(c) of the Industrial Disputes Act, 1947, for adjudication. The terms of the reference are:—

Whether the termination of services of Shri Roop Chand was justified and in order ?
If not, to what relief is he entitled ?

According to demand notice, the workman was employed on 5th January, 1979. His services were illegally terminated on 16th November, 1981. He has prayed for reinstatement with continuity of service and with full back wages.

The management has contested this claim. It is contended that the claimant was appointed on 1st March, 1981 as helper. He was appointed for three months. This period was extended for three months. The services of the claimant were terminated on 30th October, 1981 as per terms and conditions of appointment letter. Objection is further taken that he is gainfully employed and that the dispute has been referred at a late stage.

The workman has denied the averments in the rejoinder. The reference was contested on the following issues:—

As per Reference.

I have heard the representatives of both the parties and gone through the evidence on record. My findings on the issue are as under:-

Issue No. 1:

The management has examined MW-1 Shri Krishan Kumar Sharma. He has stated that the workman was previously employed in January, 1979 and he worked upto April, 1979. He was

again employed on 1st March, 1981 and his services were terminated in October, 1981. The contention of the workman is that his services were continuous from January, 1979 to October, 1981. This contention of the workman has been falsified from the voucher Ex. M-7. He has admitted his signatures on this document—*vide* this voucher he had received the dues upto April, 1979 in full and final settlement of his claim. He has also admitted his signatures on Application Ex. M-1. *Vide* Ex. M-1 he was employed on 1st March, 1981. Hence there was great break in service from April, 1979 to 1st March, 1981. He has not challenged his termination of April, 1979. He had completed 240 days of service upto 30th October, 1981 when his services were terminated. The workman has admitted that he met with an accident on 8th September, 1981 and remained in hospital for 24 days. This period is to be counted on duty. It is contended that termination letter Ex. M-2 was sent to the workman through UPC. It is therefore, clear that no retrenchment compensation was sent to him with this letter. It is admitted by MW-1 that the factory is now working and about 25 workmen are working in the factory. Hence the order of termination of services of the workman was illegal and unjustified as mandatory provisions of section 25-F of the I. D. Act were not complied with. Reliance is placed on the voucher Ex. M-5 that the workman had received Rs. 73.00 on 8th November, 1981 in full and final settlement of his accounts and no further claim left against the factory. This voucher does not show that the workman has settled all his disputes including his right of reinstatement/re-employment. Moreover this letter is written in English and there is no evidence that the workman was made to understand this voucher. Hence it cannot be said that he has settled his dispute. He has received his remaining wages. In view of the above discussion I give the award that the order of termination is illegal and unjustified. The workman is entitled to be reinstated with continuity of service and with full back wages. He is also entitled to Rs. 300 as costs of the proceedings.

Dated, the 19th February, 1986.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 813, dated the 18th March, 1986.

Forwarded (four copies), to the Commissioner & Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act 1947.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

No. 9/8/86-6 Lab./2914.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of (i) Haryana Roadways, Faridabad. (ii) State Transport Controller, Haryana, Chandigarh:—

IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 423 of 1985

between

SHRI NAND LAL, HELPER, WORKMAN AND THE RESPONDENT-MANAGEMENT OF
(i) HARYANA ROADWAYS, FARIDABAD; (ii) STATE TRANSPORT CONTROLLER, HARYANA,
CHANDIGARH

Present :

Shri Bhim Singh Yadav for the Workman.
Shri K. L. Piplani for the respondent-management.

AWARD

This industrial dispute between the workman Shri Nand Lal, Helper and the respondent-management of (i) Haryana Roadways, Faridabad; (ii) State Transport Controller, Haryana Chandigarh has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/1-47-85/31128-34, dated 24th July, 1985, under section 10(i) (c) of the Industrial Disputes Act, 1947, for adjudication. The terms of the reference are:—

Whether the termination of services of Shri Nand Lal was justified and in order? If not, to what relief is he entitled?

According to the demand notice, the workman was employed on 13th May, 1983, as helper and his services were illegally terminated on 24th September, 1984. Provisions of section 25-F of the I. D. Act were not complied with. The workman has prayed for reinstatement with the continuity of service and with full back wages.

In the written statement, the management has admitted that the workman was appointed on 10th May, 1983 on daily wages. His services were terminated on 24th September, 1983 as according to the report of Works Manager Shri K. L. Dua the workman was not taking interest in his work.

Rejoinder has been filed denying his averments. The reference was contested on the following issues:—

As per reference.

I have heard the representatives of both the parties and gone through the evidence on record. My findings on the issues are as under:—

Issue No. 1 :

It has been admitted by MW-1 that the workman was appointed since 10th May, 1983 and his services were continuous till the date of his appointment. He has further admitted that no charge-sheet was issued to the workman on the basis of the report of the Works Manager which is Ex-M-2. From this admission by the witness of management, it is clear that the workman was retrenched when he had completed more than 240 days of service within last one year. Provisions of section 25-F of the Industrial Disputes Act, 1947 were not complied with before terminating the services of the claimant. Hence the services of the workman were terminated illegally and unjustifiably. I, therefore give the award that the workman is entitled to be reinstated with continuity of service and with full back wages. He is also awarded Rs. 300 as costs of the proceedings.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

Dated the 18th February, 1986.

c Endst. No. 816, dated the 18th March, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

No. 9/8/86-6Lab./2931.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Advance Industries, Khanda Road, Gurgaon :—

IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT
FARIDABAD

Reference No 163 of 1985

between

SHRI BHIM SINGH, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S
ADVANCE INDUSTRIES, KHANDSA ROAD, GURGAON.

Present:—

Shri Rishi Parkash for the workman

Shri M. P. Gupta for the respondent-management.

AWARD

This industrial dispute between the workman Shri Bhim Singh and the respondent-management of M/s. Advance Industries, Khanda Road, Gurgaon has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/GGN/10524-29, dated 15th March, 1985 under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are :—

Whether the termination of services of Shri Bhim Singh was justified and in order ? If not, to what relief is he entitled ?

According to the demand notice, the claimant was working for the last four years. He proceeded on one month's leave from 7th March, 1984. He returned on 6th April, 1984. He was not taken back on duty. He was told that he had resigned. The workman told that he had given an application for leave. This application was got written from a person. He has payed for reinstatement with continuity of service and with full back wages.

This claim of the workman has been contested by the management. Objection is taken that the reference has been rejected by the Government many a times and now the reference is bad. It is denied that the workman was granted leaves from 7th March, 1984, to 6th April, 1984. It is further pleaded that the workman resigned voluntarily,—*vide* his resignation letter, dated 8th March, 1984. This resignation was accepted by the management and communicated to the workman. The workman was directed to collect the dues but he did not collect the same. He came to the factory on 8th April, 1984 and voluntarily collected a sum of Rs 174.19 P. in full and final of all his claims. He has also obtained service certificate which was sent to him on 10th April, 1984. He has also started his own work in the name of M/s Tej Repairing Workshop.

In the rejoinder he has denied that he has opened his own workshop. The reference was contested on the following issues:

1. As per reference?

I have heared the representatives of both the parties and gone through the evidence on record. My findings on the issues are as under.

Issue No. 1—

The management has examined MW-1 Shri Inder Mohan Batra. He has stated that the workman has resigned voluntarily. It was accepted by the management. This resignation is Ex. M-1 Service Certificate was sent to him. The workman had stated that he had started his own business in the name and style of M/S. Tej Repairing Works near to the respondent factory; Shri Bhim Singh & Shri Man Chand were partners of that firm. He got his industry registered with the industry department. The workman again came to the factory and collected his dues,—*vide* voucher Ex. M-3, and a sum Rs. 110.63 was paid to him on the register. Rs. 174.19 P. was also paid to him. The management has also examined MW-2 Shri Satya Bhan Yadav, Inspector, Industries, Gurgaon. He has stated that M/s. Tej Repairing works is registered with the department. Its project report was received. It is signed by the claimant. Its Photo copy is Ex. M-6. Copy of the partnership deed was also received. Photo copy of which is Ex. M-7. This unit has been registered as small scale unit. Photo copy of which is Ex. M-8. The application was sponsored by the Gurgaon Gramin Bank. Sponsored report is Ex. M-9. The claimant has also withdrawn Rs. 22,000.00 from the Bank. The claimant also applied for subsidy. The Inspector went to the spot and found that M/s. Taj Repairing Workshop was Working. Hence the subsidy was paid to him. The workman has admitted in his statement that he has started M/s. Taj Repairing works at keadsa Road, Gurgaon. He is partner of that firm. He has admitted the copy of the partnership Ex. M-7. He had also taken loan from the Bank. This firm has also been got registered with the Small Scale Industries. Loan has also been admitted to have taken from the Bank. But the workman has denied that he has resigned voluntarily. All the document have proved that he has started work in the name and style of M/s. Taj Repairing Works. He is partner of the firm. It is, therefore, clear that he resigned voluntarily. His resignation letter is Ex. M-1. The workman has admitted his signatures on Ex. M-1. He has also collected his full and final payment,—*vide* voucher Ex. M-3. The workman has also admitted his signature on voucher Ex. M-3. He has not been able to explain the signatures on these documents. He has stated that he had given an application for leave, but he has not been able to prove that Ex. M-1 was blank when he signed it.

In view of the above discussions, I, find that the workman has voluntarily resigned and his services were never terminated.

The award is given accordingly.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 836; dated the 18th March, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. SINGAL,
Presiding Officer
Labour Court, Faridabad.